In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 899

NEW YORK TRUST COMPANY, AS TRUSTEE UNDER Trust Indenture, Dated December 24, 1921, by and between Conrad Henry Matthiessen and said the New York Trust Company, petitioner

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The respondent does not oppose the petition in this case, if the petition in No. 873, *Helvering* v. *New York Trust Co.*, is granted.

The present respondent has filed a petition for writ of certiorari in this case to review the decision of the court below insofar as it held that the gain on the sale in 1922 by a trustee of property purchased by the donor in 1906 and given to the trustee

49121—34

in 1921, was taxable as a capital net gain under Section 206 of the Revenue Act of 1921, which defines "capital assets" as assets which have been held by "the taxpayer" for more than two years.

In the present petition the trustee contends that Section 202 (a) (2) of the Revenue Act of 1921, providing that the basis for ascertaining the amount of the gain or the loss upon the sale of "property acquired by gift" shall be the same as that which it would be in the hands of the donor, does not apply to the sale in 1922, and that the trustee as "the taxpayer" should therefore take as its basis the value of the property upon the date of the gift to it.

The question raised in the taxpayer's petition is so closely related to that presented in the Commissioner's petition that it may be helpful to the Court to take jurisdiction of the entire controversy, if it is to consider any part of it. Therefore, although we believe the decision below was correct on the point raised in the present petition, we do not oppose the granting of the writ.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

MARCH 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934